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**BY ECF & E-MAIL:**

Hon. Richard J. Sullivan  
United States District Judge  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square, Room 2104  
New York, NY 10007

Re: Nnebe v. Daus, 06 Civ. 4991 (RJS)

Your Honor:

We are writing as co-counsel to plaintiffs in the above-referenced matter to respond briefly to defendants' letter of September 17. Apart from noting that *U.S. v. Cosme* and this case have different facts, defendants claim two distinctions. First, they argue that the *Cosme* seizure was "punitive" while the TLC's interest is "regulatory." In fact, *Cosme* emphasized that the government's "switch from civil forfeiture to criminal forfeiture" made no substantial difference. In either case, *Cosme* holds that the government is required to show "probable cause" to justify the seizure of assets, which is different from probable cause to arrest or indict. *Cosme* Slip Op.15-17.

Second, defendants continue to seek refuge in *Gilbert v. Homar*, 520 U.S. 924 (1997). But in this very case, the Second Circuit explained that *Gilbert* may, in emergency situations, justify the denial of a pre-deprivation hearing, provided there is prompt and meaningful post-suspension process. 644 F.3d at 159; compare *Bailey v. Pataki*, 708 F.3d 391, 401 (2d. Cir. 2013) (" '[W]here the State feasibly can provide a predeprivation hearing,' however, 'it generally must do so regardless of the adequacy of a postdeprivation ... remedy.'" (quoting *Zinerman v. Burch*, 494 U.S. 113, 132 (1990))). But *Gilbert* has no bearing on the adequacy or meaningfulness of the post-deprivation hearings that the plaintiff taxi drivers are afforded by the TLC and which are the primary focus of proceedings before this Court.

Respectfully,

/s/

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cc: Mary O'Sullivan, Esq.  
Amy Weinblatt, Esq.